IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES GEORGE DOURIS,	:	CIVIL ACTION
Plaintiff	:	
v.	:	
MARK S. SCHWEIKER, Governor, Commonwealth of Pennsylvania; COUNTY OF BUCKS; BUCKS COUNTY DISTRICT ATTORNEY'S OFFICE; DIANE GIBBONS; MICHELLE A. HENRY; ANNE SCHEETZ DAMON; TIMOTHY RAUCH; All but Defendant Schweiker sued individually and in their official capacity. Held jointly and severally liable	:	
Defendants	:	NO. 02-1749

Baylson, J. **November 22, 2002**

MEMORANDUM

Plaintiff James George Douris ("Plaintiff" or "Douris") commenced this civil rights case against the following defendants: Mark S. Schweiker, Governor of the Commonwealth of Pennsylvania ("Schweiker"); the County of Bucks; the Bucks County District Attorney's Office; Bucks County District Attorney Diane Gibbons; Bucks County Assistant District Attorney Michelle A. Henry; Bucks County Assistant District Attorney Anne Scheetz Damon; and Timothy Rauch, a Bucks County police officer (collectively "Defendants"). The Complaint contains six counts alleging violations and retaliation under the First Amendment and Americans with Disabilities Act ("ADA"), 42 U.S.C § 12101 *et seq*., 42 U.S.C. § 1983, and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. § 951 *et seq.* The

Complaint also alleges violations of the Pennsylvania Constitution, malicious prosecution, abuse of process, conspiracy, and a constitutionally inadequate state appeals process. In an October 23, 2002 Order, the Court granted in part and denied in part Defendants' Motions to Dismiss. Plaintiff's only remaining claims are Count II against Defendants County of Bucks, Bucks County District Attorney's Office, and Timothy Rauch alleging violations of 42 U.S.C. § 1983, and Count IV against Defendant Rauch alleging malicious prosecution.

Presently before the Court is Plaintiff's Motion for Reconsideration, and in the Alternative, for Certification to File a Permissive Interlocutory Appeal from the Court's October 23, 2002 Order. For the reasons which follow, Plaintiff's Motion will be denied.

I. Reconsideration Under Federal Rule of Civil Procedure 59(e)

The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171, 106 S. Ct. 2895, 90 L. Ed. 2d 982 (1986)). A court should grant a motion for reconsideration only "if the moving party establishes one of three grounds: (1) there is newly available evidence; (2) an intervening change in the controlling law; or (3) there is a need to correct a clear error of law or prevent manifest injustice." Drake v. Steamfitters Local Union No. 420, C.A. No. 97-585, 1998 U.S. Dist. LEXIS 13791, at *7-8 (E.D. Pa. Sept. 3, 1998) (citing Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994)). "Because federal courts have a strong interest in finality of judgments, motions for reconsideration should be granted sparingly." Continental Casualty Co. v. Diversified Industries, Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995).

Plaintiff does not demonstrate the existence of any of the three factors for

reconsideration. He presents no new evidence, shows no intervening change in controlling law, and points to no clear error of law or manifest injustice. See Drake, 1998 U.S. Dist. LEXIS 13791, at *7-8. A motion for reconsideration is not properly grounded on a request that the Court simply rethink a decision it has already made. Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993). Therefore, the Court declines to reconsider its decision to grant Defendants' Motions to Dismiss.

II. Certification of Interlocutory Appeal Under 28 U.S.C. § 1292(b)

In general, a matter may not be appealed to a court of appeals until a final judgment has been rendered by the district judge under 28 U.S.C. § 1291. A district court is authorized to certify an order for interlocutory appeal only if it finds that: (1) the order involves a controlling question of law, (2) upon which there is substantial ground for difference of opinion, and (3) an immediate appeal may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). The decision to certify an appeal rests within the sound discretion of the district court. United States v. Exide Corporation, C.A. No. 00-3057, 2002 WL 992817, at *2 (E.D. Pa. May 15, 2002) (citing Delaware Valley Toxics Coalition v. Kurz-Hastings, Inc., 813 F. Supp. 1132, 1142 (E.D. Pa. 1993). The burden is on the party seeking certification to demonstrate that "exceptional circumstances justify a departure from the basic policy against piecemeal litigation and of postponing appellate review until after the entry of a final judgment." Rottmund v. Continental Assurance Co., 813 F. Supp. 1104, 1112 (E.D. Pa. 1992).

Plaintiff maintains that he is entitled to immediate appellate review of the following issues: (1) whether Plaintiff may challenge the constitutionality of the state appeals process, and if the governor is properly named as a defendant for that challenge; (2) whether absolute

immunity is afforded to prosecutors for withholding exculpatory evidence; and (3) whether Plaintiff was estopped under the doctrines of res judicata and/or collateral estoppel from pursuing § 1983 claims against the defendant prosecutors.

A. Constitutionality of the State Appeals Process

Plaintiff seeks certification over "the issue of whether the Plaintiff could challenge the constitutionality of the Commonwealth of Pennsylvania's appeal process as it was applied and on its face. Also, whether the Governor is the proper person to be named as defendant, and if dismissal was proper under the Eleventh Amendment." (Pl.'s Mem. Supp. Mot. 5). In its October 23, 2002 Memorandum and Order, the Court addressed Plaintiff's claim and provided sufficient support for its conclusion that the Eleventh Amendment barred Plaintiff's Complaint against Defendant Schweiker in his official capacity and that he was not properly named as a defendant:

> Count VI of Plaintiff's Complaint is brought under 42 U.S.C. § 1983 and alleges that Defendant Schweiker "fails to have an adequate or meaningful appeal process that meets federal constitutional due process requirements designed to insure against prosecutorial misconduct." (Pl.'s Compl. ¶ 52). Plaintiff seeks money damages and a declaratory judgment that the "State appeal process [is] constitutionally inadequate." Id. at ¶ 55.
>
> The Eleventh Amendment bars Plaintiff's § 1983 damages claim against Schweiker in his official capacity. [(footnote omitted)]. Federal courts can not consider suits by private parties against states and their agencies unless the state has consented to the filing of such a suit. Atascadero State Hospital v. Scanlon, 473 U.S. 234, 241, 105 S. Ct. 3142, 87 L. Ed. 2d 171 (1985); Edelman v. Jordan, 415 U.S. 651, 662, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974). This immunity extends to suits asserting civil rights violations where the state is named as a defendant. Laskaris v. Thornburgh, 661 F.2d 23, 26 (3d Cir. 1981). "Under the Eleventh Amendment, a plaintiff other than the United States or a state may not sue a state in federal court without the latter state's consent unless Congress abrogates the state's Eleventh Amendment immunity pursuant to a constitutional provision granting Congress that power." Chittister v. Dep't. of Community &

Economic Dev., 226 F.3d 223, 226 (3d Cir. 2000).

The Commonwealth of Pennsylvania has not waived its rights under the Eleventh Amendment. "By statute Pennsylvania has specifically withheld consent [to be sued]." Laskaris, 661 F.2d at 25 (citing Pa. Cons. Stat. Ann. § 8521(b)). Additionally, § 1983 does not abrogate the Eleventh Amendment. Quern v. Jordan, 440 U.S. 332, 345, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979). Further, the Eleventh Amendment immunizes state officials acting in their official capacity, such as Schweiker, from § 1983 damages claims by individuals. Kentucky v. Graham, 473 U.S. 159, 169, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985).

An essential element of any claim under § 1983 is that the alleged wrongdoing was committed by a "person." 42 U.S.C. §1983. "[N]either a State nor its officials acting in their official capacities are "persons" under § 1983." Will v. Michigan Dep't. of State Police, 491 U.S. 58, 71, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989).

Plaintiff argues that the Eleventh Amendment does not bar his damages claim against Defendant Schweiker in his official capacity because by receiving federal money, the Commonwealth of Pennsylvania has contracted away its right to Eleventh Amendment immunity. (Praecipe to Court of 8/21/02, at 1). In support of that proposition, Plaintiff citesBarnes v. Gorman , ___ U.S. ___, 122 S. Ct. 2097, 153 L. Ed. 2d 230 (2002) and South Dakota v. Dole, 483 U.S. 203, 107 S. Ct. 2793, 97 L. Ed. 2d 171 (1987). However, both of these cases are unavailing to Plaintiff. Barnes was brought under § 202 of the ADA and § 504 of the Rehabilitation Act and held that a remedy is appropriate under Spending Clause legislation if the funding recipient is on notice that it is subject not only to those remedies provided in the relevant legislation but also to remedies usually available in breach of contract suits. 122 S. Ct. at 2101-02. Dole held that a federal statute conditioning a state's receipt of highway funds on that state's adoption of a minimum drinking age was a valid use of Congress' spending power. 483 U.S. at 208-09. Neither case involved a § 1983 claim, and as discussed above, Congress has not abrogated the Eleventh Amendment immunity of the states.

Additionally, Schweiker notes that only the Pennsylvania General Assembly has the power to make laws which affect the criminal appeals process. (Def. Schweiker's Mot. to Dismiss 7-8). "The 'legislative power' in its most pristine form is the power 'to make, alter and repeal laws.'" Blackwell v. State Ethics Comm'n, 567 A.2d 630, 636 (Pa. 1990) (citations omitted); Pa. Const. art. I, § 1. The Pennsylvania Supreme Court has the exclusive power to establish rules of procedure for Commonwealth's judicial system. Commonwealth v. Brown, 669 A.2d 984, 988 (Pa. Super. 1995) (citing Pa. Const. art. V, § 10(c)). Even if the Governor did not have sovereign immunity under the Eleventh Amendment,

> Plaintiff still has not stated a claim against him because it is the General Assembly and/or the Pennsylvania Supreme Court, not the Governor, which has the power to change the state's criminal appeals process.
>
> For the foregoing reasons, Plaintiff's § 1983 claim against Defendant Schweiker in his official capacity will be dismissed.

Douris v. Schweiker, ___ F. Supp. 2d ___, 2002 WL 31386165, at *10-11 (E.D. Pa. Oct. 23, 2002).

Plaintiff's brief in support of his Motion does not point out any legal error in the above analysis.

B. Absolute Immunity

Plaintiff also seeks certification of whether prosecutors are entitled to absolute immunity for withholding exculpatory evidence, an action that he maintains is an administrative function. (Pl.'s Mem. Supp. Mot. 4). The Court's October 23, 2002 Memorandum and Order amply supported its conclusion that the defendant prosecutors are entitled to absolute immunity for their quasi-judicial actions at issue in this case:

> In his Complaint, Plaintiff alleges that Defendants "filed and/or prosecuted criminal and traffic charges against the Plaintiff, withheld on these charges Brady exculpatory evidence." (Pl.'s Compl. ¶ 23). Defendants assert absolute immunity.
>
> Prosecutors are absolutely immune for actions performed in a quasi-judicial role. Imbler v. Pachtman, 424 U.S. 409, 431, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976); Kulwicki v. Dawson, 969 F.2d 1454, 1463 (3d Cir. 1992). Absolute immunity is afforded to prosecutors for acts "intimately associated with the judicial phase of the criminal process" such as initiating and prosecuting a criminal case. Imbler, 424 U.S. at 430-31. In Imbler, the Supreme Court noted numerous public policy considerations for granting absolute immunity to prosecutors from § 1983 claims stemming from their actions as prosecutors: (1) a prosecutor's exercise of independent judgment would be compromised if he or she were threatened with suits for damages for actions in initiating criminal cases; (2) the prosecutor's energies would be diverted from his or her official duties if forced to defend against § 1983 actions; (3) a post-trial decision in favor of the accused might result in a § 1983 action against the prosecutor for alleged errors or mistakes in judgment. 424 U.S. at 425-27.

> Plaintiff asserts that Defendants acted in an investigative or administrative capacity and therefore are entitled only to qualified immunity. (Pl.'s Resp. to Def.'s Mot. to Dismiss 3-6). When a prosecutor serves as an administrator rather than an officer of the court, he or she is only entitled to qualified immunity. Buckley v. Fitzsimmons, 509 U.S. 259, 273, 113 S. Ct. 2606, 125 L. Ed. 2d 209 (1993). However, prosecutors are absolutely immune in § 1983 actions for their decisions to prosecute, and withholding exculpatory evidence is a quasi-judicial act protected by absolute immunity. Hull v. Mallon, C.A. No. 00-5698, 2001 U.S. Dist. LEXIS 12755, at *5 (E.D. Pa. Aug. 21, 2001). See also Parker v. Stiles, C.A. No. 00-5335, 2001 U.S. Dist. LEXIS 9085, at *3-5 (E.D. Pa. June 29, 2001); Barnes v. City of Coatesville, C.A. No. 93-1444, 1993 U.S. Dist. LEXIS 9112, at *22-24 (E.D. Pa. June 28, 1993).
>
> In the instant case, Defendants have absolute immunity from Plaintiff's claims against them for their actions in initiating and prosecuting a criminal investigation and for their alleged improper conduct in withholding exculpatory evidence.

2002 WL 31386165, at *4.

Plaintiff's brief in support of his Motion does not point out any legal error in the above analysis.

C. Res Judicata and/or Collateral Estoppel

Finally, Plaintiff contends certification is necessary to determine if res judicata and/or collateral estoppel estopped Plaintiff from pursuing his § 1983 claims against the defendant prosecutors. The Court addressed this issue in its October 23, 2002 Memorandum and Order:

> The doctrine of collateral estoppel precludes a party from litigating an issue that has already been adjudicated in a previous proceeding. Witkowski v. Welch, C.A. No. 92-0924, 1997 U.S. Dist. LEXIS 4788, at *7 (E.D. Pa. Apr. 14, 1997), aff'd, 173 F.3d 192 (3d Cir. 1999)). Four elements must be met for collateral estoppel to apply: (1) the issue decided in the prior adjudication must be identical to the one presented in the later action; (2) there must have been a final judgment on the merits; (3) the party against whom collateral estoppel is being asserted must have been a party or in privity with a party to the prior adjudication; (4) the party against whom collateral estoppel is being asserted must have had a full and fair opportunity to litigate the issue in question in the prior action. Id. at *7 (citing Schroeder v. Acceleration Life Ins. Co., 972 F.2d 41, 45 (3d Cir. 1992); Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1073 (3d Cir. 1990)).

> In the instant case, Plaintiff is collaterally estopped from pursuing any claims of retaliation over his application for the park supervisor position and the subsequent harassment charge and prosecution. Plaintiff litigated these claims in a prior action, which resulted in a jury verdict and entry of judgment for Bucks County and dismissal of the other defendants.
>
> Defendants in the instant case are in privity with Bucks County, the defendant in the prior litigation. Therefore, Plaintiff may not relitigate these issues.
>
> c. Res Judicata
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> Claim preclusion, or res judicata, "'prohibits reexamination not only of matters actually decided in the prior case, but also those that the parties might have, but did not assert in that action.'" Williams v. Lehigh County Dep't. of Corrections, 19 F. Supp. 2d 409, 411 (E.D. Pa. 1998) (quoting Edmundson v. Borough of Kennett Square, 4 F.3d 186, 189 (3d Cir. 1993)). Res judicata requires the following three factors: (1) a final judgment on the merits in a prior suit involving (2) the same parties or those in privity with them, and (3) a subsequent suit based on the same cause of action. Id. at 411.
>
> In the instant case, Plaintiff's claims are barred by res judicata. Plaintiff's prior action resulted in a jury verdict in favor of Bucks County, the prior defendant with whom Defendants in the instant action are in privity, and this case arose from the same set of facts as the previous case – the application for the park supervisor position and subsequent criminal prosecution and conviction of harassment. Therefore, res judicata prevents Plaintiff's claims.

Douris v. Schweiker, 2002 WL 31386165, at *4-5.

Plaintiff's brief in support of his Motion does not point out any legal error in the above analysis.

All three of the requirements under § 1292(b) must be met in order for a court to grant certification for appeal. See Piazza v. Major League Baseball, 836 F. Supp. 269, 270 (E.D. Pa. 1993). Because Plaintiff has not met his burden with regard to these requirements, the Court declines to certify its October 23, 2002 Order for a § 1292(b) interlocutory appeal.

IV. Conclusion

For the reasons stated above, Plaintiff's Motion for Reconsideration, and in the Alternative, for Certification to File a Permissive Interlocutory Appeal from this Court's October 23, 2002 Order will be denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES GEORGE DOURIS,	:	CIVIL ACTION
Plaintiff	:	
v.	:	
MARK S. SCHWEIKER, Governor, Commonwealth of Pennsylvania; COUNTY OF BUCKS; BUCKS COUNTY DISTRICT ATTORNEY'S OFFICE; DIANE GIBBONS; MICHELLE A. HENRY; ANNE SCHEETZ DAMON; TIMOTHY RAUCH; All but Defendant Schweiker sued individually and in their official capacity. Held jointly and severally liable	:	
Defendants	:	NO. 02-1749

ORDER

AND NOW, this 22nd day of November, 2002, upon consideration of Plaintiff's Motion for Reconsideration, and in the Alternative, for Certification to File a Permissive Interlocutory Appeal from this Court's October 23, 2002 Order (Doc. 30), and opposition thereto, it is hereby

ORDERED that Plaintiff's Motion is DENIED.

It is further ORDERED that Plaintiff's Motion to Amend (Doc. 17) is DENIED AS MOOT.[1]

BY THE COURT:

_____

MICHAEL M. BAYLSON, U.S.D.J.

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[1]Under Fed. R. Civ. P. 15(a), a "party may amend its pleading once as a matter of course at any time before a responsive pleading is served." When Plaintiff filed his Motion to Amend, only a motion to dismiss, but not a responsive pleading, had been filed. Therefore, Plaintiff was free to amend his Complaint without the Court's permission, but apparently chose not to do so.